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No. _____

In The
Supreme Court of the United States

RANDALL WAYNE ENYEART,

Petitioner,

v.

STATE OF MINNESOTA,

Respondent.

On Petition For Writ of Certiorari to the Court of Appeals for the State of Minnesota

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1) Whether federal law, 49 U.S.C. § 40116(f), preempts Minnesota from filing felony charges relating to the imposition of its tax laws against a person present there because of his employment as a flight instructor and commercial airline pilot.

2) Whether federal Due Process allows Minnesota in a criminal proceeding to present conflicting theories of either his being a domiciled Minnesota resident (intentional evasion) or his being a non-domiciled resident present in Minnesota for more than half the year (inadvertence) and in not requiring a unanimous verdict on one or the other.

3) Whether Minnesota law concerning a "domiciled resident" is so impermissibly vague and indefinite that it denies Due Process guarantees.

4) Whether Minnesota denied Due Process guarantees of a criminal defendant by allowing written substantive evidence to the Jury that he bore the affirmative duty to maintain and produce records sufficient to prove that he was not a resident, thereby impermissibly shifting the burden of proof.

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PETITION FOR WRIT OF CERTIORAI TO THE UNITED STATES SUPREME COURT

Mr. Randall Wayne Enyeart respectfully requests that the Honorable Justices of the Supreme Court grant a Writ of Certiorari to review the judgment of the Court of Appeals for the State of Minnesota rendered on March 23, 2004. In support of his request, Mr. Enyeart sets forth the following:

OPINIONS BELOW

The opinion of the Court of Appeals for the State of Minnesota which is the subject of this Petition is State v. Enyeart, 676 NW2d 311 (Minn. App. 2004) and is set forth as Appendix A. The Supreme Court of Minnesota denied Mr. Enyeart's Petition for Discretionary Review of the Court of Appeals on May 18, 2004, set forth as Appendix B.

STATEMENT OF BASIS FOR JURISDICTION

The opinion of the Court of Appeals for the State of Minnesota affirming Mr. Enyeart's conviction was entered on March 23, 2004. Order refusing to review that decision was entered by the Supreme Court of Minnesota on May 18, 2004. Jurisdiction to review the decision of the Minnesota Court of Appeals is granted by 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

Article VI: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

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* * * * *

STATEMENT OF THE CASE

A. Basis for Federal Review in the First Instance.

In this case believed to be of first impression, the issue is raised concerning whether federal law preempts Minnesota taxation of Mr. Enyeart while based in Minnesota as a pilot-flight instructor employed by Northwest Airlines, Inc. Mr. Enyeart was convicted in a Minnesota district court and his case has timely proceeded through the appellate courts of Minnesota established to hear such appeals.

B. Procedural History.

Mr. Enyeart, a pilot and flight instructor for Northwest Airlines, based in Minnesota and Michigan, was charged with knowingly filing fraudulent state tax returns, willfully evading income taxes, and intentionally evading motor-vehicle taxes on the theories that he sought to avoid

Minnesota taxation by claiming to be a domiciliary of Alaska or that he was a domiciliary of Alaska residing in Minnesota more than 183 days maintaining an abode there. He defended by asserting that federal law preempted the state from imposing such taxes and made other defenses predicated from federal law. A jury returned a verdict of guilty and sentence was imposed. He sought reversal in the Minnesota Court of Appeals which was denied on March 23, 2004. He sought discretionary review with the Supreme Court of Minnesota, which on May 18, 2004, denied relief. He now seeks issuance of a Writ of Certiorari.

C. Statement of Material Facts.

Randall Enyeart began working for Northwest in 1979. He married, had two children and moved to Minnetonka, Minnesota. In 1997, he and his wife separated. He moved to Alaska. The marital residence was immediately put up for sale but his ex-wife lived there until June of 1998. He claimed Minnesota residency on his federal and state income tax returns from 1993 until 1997. During his employment as a pilot with Northwest he flew out of four different bases: Seattle, Minnesota, New York and Detroit. His last base transfer was to Detroit in September of 1999 when he became a Boeing 747-400 captain.

Enyeart completed payroll residency forms and listed his residency as Minnesota on January 1, 1993. He changed this to Anchorage effective September 30, 1997 (T. 217-242). He filed income tax forms with Minnesota through 1998. He did not file with Minnesota in 1999 and 2000 because his state of residency was Alaska. (T411-32) His employment records of Northwest showed him to be a resident of Alaska from such time. Minnesota did not challenge such employment records, administratively or otherwise.

Enyeart was a registered voter in Alaska, had an Alaska driver's license, received mail in Alaska, registered his cars in Alaska, received relative-homestead and non-resident tax treatment on the Minnesota house. He filed Minnesota income taxes as a non-resident prepared by a Minnesota accountant.

Criminal charges were brought under Minn. Stat..§ 289A.63. Issues here involve Minn. Stat. § 290.01 Subd. 7 regarding the Minnesota definition of "resident" and its implementing Rule, 8001.0300 [App p 33].

Minnesota Rule 8001.0300, subpart 1, A & B. defines the term "resident" as "any individual person who is domiciled in Minnesota". The Rule lists 26 factors to be considered in determining whether someone is domiciled in Minnesota. The Court instructed on 27 factors [App p 13], adding as a factor where someone's family is domiciled – treating that as a presumption. Factor W of the Minnesota factors relating to residency reads:

> "W. percentage of time (not counting hours of employment) that the person is physically present in Minnesota and the percentage of time (not counting hours of employment) that the person is physically present in each jurisdiction other than Minnesota."

The State's theories were in the alternative. One was that Enyeart was a Minnesota domiciliary and not an Alaska domiciliary as he had claimed. The other was that he was a domiciliary of Alaska present in Minnesota as a non-domiciliary who owned an abode in Minnesota and who had spent 183 days or more in the State. The Jurors were allowed to find guilt under either theory.

Under the State's calculations, in order for it to prove that Enyeart was in the State 183 days or more it was necessary to include partial days that he was in the State solely as a pilot for Northwest, i.e., days in which he flew into or out of Minnesota on a scheduled flight, and there was no evidence that he subsequently left the State after the flight. (T. 903) To make a showing that he was present more than 183 days in 2000 the State included days that he was required to be in Minnesota as a flight instructor (four months out of the year). Also included were times that he was in transit and made ATM transactions in Minnesota.[1]

On January 3, 1996, John Haugen, an attorney representing the Minnesota Department of Revenue, sent a letter to John W. Windhorst, Jr., an attorney representing Northwest Airlines. That letter represented that non-resident pilots were not subject to taxation when they are present in Minnesota for their duties as flight instructors.

Enyeart asserted that the federal statute shields income earned by him while a pilot flying into, out of, or over a state; this prohibited Minnesota from counting such days to establish presence in Minnesota based upon his status of being a non-domiciled resident. It was not disputed that Minnesota could not establish that Enyeart had spent more

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[1] 240 ATM events over 3 years average 80 per year. [App 6] All large commercial aircraft have 2 "jump seats" on the flight deck, reserved for non-ticketed off-duty flight crew in transit. Prior to 9/11 no record of its occupant was kept, as opposed to the regular flight crew and passengers. Enyeart was frustrated throughout the trial that when he flew into and out of Northwest's Minnesota hub many times in the jump seat that it was wrongfully portrayed that he spent a day in Minnesota because he used an ATM [App 6]. In many of those events he generally spent only a short time at or near the airport before flying out again in the jump seat, but no record was made of his merely passing through Minnesota.

than 183 days in Minnesota without counting such days. The Court denied his motion and his requested instructions. Instead, the Court instructed that such days could be counted.

In so instructing, the Court applied law that is in conflict with federal law. Enyeart asserts that while acting as a pilot, he was entitled to a modified application of Minnesota law. Because the jury was permitted to apply either theory including the one applying the incorrect counting of days spent in Minnesota, the incorrect standard was prejudicial.

Enyeart purchased a new 2000 vehicle. Enyeart was convicted of failure to pay motor vehicle tax. Because Minnesota law exempts non-residents from that tax Enyeart and the State agreed that the jury instruction relating to this would be the same as that concerning the income tax counts – that the State must prove that Enyeart was a resident of Minnesota. Thus, this issue is coterminous with other counts and subject to the same arguments concerning residence.

To rationalize sustension of the verdict, the Court of Appeals recited incorrect facts which it urged supported culpability. Page constraints herein prohibit specific rebuttal. Enyeart does here address them generally. He submits that some are totally irrelevant to the issue that Minnesota is navigating in waters denied to it by federal preemption. Some melt away in the light of the recognition that Enyeart was in fact a bona fide Alaska domiciliary. Some of them are resurrections of assertions made to the trial court and totally rejected by that lower court as unfounded. He submits that Minnesota Courts were also mistaken when they relied upon presumptions in a criminal case that are in conflict with the federal statute. The usual Minnesota presumption that one's domicile is where he lives [App p 13] is repugnant to 49 U.S.C. § 40116 if applied to an airline employee.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

REASON I

IN REVIEWING A STATE FELONY CONVICTION THE MINNESOTA COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY WHICH CONFLICTS WITH 49 U.S.C. SECTION 40116(f) WHICH PREEMPTIVELY RESTRICTS THE MANNER IN WHICH THE COMPENSATION OF INTERSTATE AIRLINE EMPLOYEES MAY BE TAXED.

Enyeart raised this to the trial court by motion to dismiss prior to trial (T. 3-42), which was denied, and again by objecting to instructions given (T. 1475). [App pp 17-22]

A. The federal statute expressly addresses tax treatment by the States of airline employee pay.

The federal statute concerned is 49 U.S.C. § 40116 entitled "**State Taxation**". Subsection (f) speaks directly to state taxation of air carrier employees. It provides that:

> (f) Pay of air carrier employees.
>
> (1) In this subsection –
>
> (A) "pay" means money received by an employee for services.
>
> (B) "State" means a State of the United States, the District of Columbia, and a territory or possession of the United States.
>
> (C) an employee is deemed to have earned 50 percent of the employee's pay in a

State or political subdivision of a State in which the scheduled flight time of the employee in the State or subdivision is more than 50 percent of the total scheduled flight time of the employee when employed during the calendar year.

(2) The pay of an employee of an air carrier having regularly assigned duties on aircraft in at least 2 states is subject to the income tax laws of only the following:

(A) the State or political subdivision of the State that is the residence of the employee.

(B) the State or political subdivision of the State in which the employee earns more than 50 percent of the pay received by the employee from the carrier.

B. Federal regulation of air space and air transportation is pervasive, far-reaching and exclusive.

Congress enacted 49 U.S.C. §§ 40101 et seq. to develop a regulatory system to provide for the needs of (A) the commerce of the United States, (B) the United States Postal Service; and (C) the national defense. Sections 40101(a)(7); 40102(a)(37)(E).

Because of international importance, the Secretaries of State, Transportation and Defense are all involved. Section 40101(d) gives emphasis that security, safety and national defense are of highest priority. Governmental interests such as carrying the mail and national defense are a factor. A goal in passing the Act was to provide to the nation and the world pilots of the highest quality training.

Northwest invites pilots from all over the world to its facility for training. That facility is the largest of its kind in the world. It trains pilots of many airlines, not merely those of Northwest. To conduct such training Northwest brings flight instructors regarded by those in the industry as being the highest and most proficient in their profession, the *crème de crème*. Enyeart was a flight instructor so employed.

Federal regulation of the airline industry is pervasive. 49 U.S.C.§ 40102. Federal policies are stated in 49 U.S.C. § 40101. Regulation of airspace and its management is exclusively federal, 49 U.S.C. § 40103. Control of air navigation facilities is exclusively federal. Control of air safety is exclusively federal. As it relates to national defense, it is exclusively federal. As it is involved in mail delivery, it is exclusively federal. Pilot functioning is exclusively federal. Control of pilot training is federal. Pilot training is federal. 49 U.S.C. § 40111(3); See also, 49 U.S.C. § 42112 (pilot compensation).

In City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973) this Court held that federal law had preempted the state police power to control aircraft noise. Virtually all activities relating to the industry are exclusively federal. Even airline records are involved. 49 U.S.C. § 40115. To escape the broad scope of federal pervasiveness one must *affirmatively* seek exemption from it. 49 U.S.C. § 40109.

Those working for interstate and international commerce and in national defense are *personally* within the federal jurisdiction. Choices in their personal lives are implicated. Because of the nature of their employment, like those in the armed forces, they are often required to work and reside in

multiple places. They may call one state "home", be based in another, fly into, out of and over several others.

Congress found that transportation employees were being *personally* subjected to multiple-State claims for withholding and taxation. Testimony taken in hearings showed claims sometimes aggregated to more than earnings. Pilots and others *were being interfered with in their personal* lives *to the extent that it was directly interfering with the industry itself*, thus the necessity for enactment of the legislation.

C. The legislative history is clear that Congress intended to limit State taxing capabilities.

The Legislative History for the Senate is found at P.L. 91-569, 1970 U.S.C.C. A.N. 5039 (1970). Congress found, ". . . commerce is *unreasonably burdened* by certain income taxation policies of some states insofar as such policies affect interstate carrier employee's income." [Emphasis added] The Committee noted that 38 states impose a personal income tax upon individuals and that 31 of those states require withholding concerning residents and nonresidents. Id. at 5041.

The Committee concluded that legislation in this area would be incomplete if it did not address the very basic problem of multiple state tax liability along with the problem of multi-state withholding and/or reporting for taxation purposes. See, Id. at 5041.

> "The Committee Bill reserves to the individual states the present practice of taxing substantial compensation which is earned by a non-resident. However, it would limit that practice in accordance with the recommendation of the multi-state

> commission to states wherein more than 50 percent of the nonresident interstate carrier employee's compensation is earned. The Bill does not eliminate entirely the problem of double taxation although it does reduce the number of states which may assert the right to tax compensation paid to employees of interstate carriers to two." Id. at 5043.

The legislative history makes clear that state interference of exactly this kind is what was intended to be addressed by the legislation. The Senate Report accompanying the Bill plainly states the legislative intent – to limit a state's taxing authority over the income of pilots to two carefully circumscribed States: (1) The State of the pilot's residence; and, (2) The State in which the pilot *earns* greater than 50% of his income measured by scheduled flight time. Congress clearly intended that no other state have taxing authority over a pilot's income.

The intent of Congress was to preclude a state such as Minnesota from taxing an individual such as Enyeart unless Minnesota was his residence or he flew more than 50% of his scheduled flight time within its borders. Congress *left no room* for a third taxing state, a state where a pilot has an abode and is present more than 50% of his time if such time is reached only by adding time flying into, out of or over the State. Indeed, it is probable that Congress envisioned a scenario of just this kind involving transient airline employees when it correlated the prospective taxing state's interests to "scheduled flight time" and not mere presence.

Subsection (f) must be read in conjunction with another federal statute in whose light it was enacted, Income Taxation – Carriers Act, Public Law 91-569, 84 Stat. 1499, Section 4(a) [Section 1112(a)]. That Act provided that state

of residence of a transportation employee is to be determined by the "employee's residence, *as shown on the employment records of any such carrier*". [Emphasis supplied]. [2]

49 U.S.C. § 40116(f)(2)(A) mandates that an employee of an interstate air carrier having regularly assigned duties on aircraft in at least two states is subject to the income tax laws of only the State of residence. That State of residence referred to in subsection (A) is confined to what is shown on the records of the employer carrier. The proper recourse of a State that wishes to challenge such records is to initiate an administrative or civil action in regard to such records.

D. Violation of Section 40116 is a federal crime.

When Enyeart was targeted by the State of Minnesota for prosecution it was well-covered in the press. One columnist publicly wondered why the Administrator of the FAA did not intervene. The following indicates the answer:

49 U.S.C. § 46301 imposes *civil* penalties for the violation of parts of the Act and places jurisdiction with the Administrator. However, that section specifically excludes Section 40116. 49 U.S.C. § 46316(a) provides a general *criminal* penalty for persons violating Section 40101 et seq. subject to a fine under Title 18. Subsection (b) provides that

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[2] If Minnesota had reason to believe that Enyeart's employment records were incorrect regarding residency, the fair and reasonable procedure would have been to adjudicate the question in a civil forum. There it could have *properly* utilized its 26+ factors in Minnesota Rule 8001.0300 [App 11-14; App 35-37] ***as modified by federal law***. If found to be a "resident", Minnesota could then seek order that he change those records. Such procedure would have been consistent with the Carriers Act. It would respect 49 U.S.C. § 40116.

subsection (a) shall not apply to Section 40101 et seq., except ...40116.... [See, App pp 28-29; 43]

Such sections remove a violation of Section 40116 from the *civil* jurisdiction of the Administrator and place it with the United States Department of Justice. Each violation and penalty separately occurs on each day that it continues.

E. Prior to this prosecution Minnesota had publicly held out a contrary position.

On January 3, 1996, the Minnesota Department of Revenue acting through John Haugen, its attorney, sent a letter to Northwest Airlines. That letter *expressly excluded non-resident pilots from income taxation when they are present in Minnesota for their duties as flight instructors.* That official letter speaking for the Minnesota Department of Revenue states that:

> "Pursuant to your letter of September 29, 1995, and our meeting in December of 1995 concerning Minnesota individual income taxation of nonresident pilots of Northwest Airlines who perform service in Minnesota as flight instructors, it is the Department of Revenue's position that the pilots would be under the protection of 49 USC 40116(f) and would not be subject to Minnesota individual income [tax] on their pay from Northwest Airlines for a given month, if at least once during the given month, the pilot flies a plane or does inflight evaluations for Northwest Airlines either as part of the flight training, on a reserve pilot basis, or a regularly assigned flight.

> For calendar months after February of 1996, Minnesota will take the position the nonresidential pilots who provide services as flight trainers in Minnesota and do not meet the above one flight per month criterion will be subject to Minnesota individual income tax on the pay from Northwest Airlines for that month.
>
> For calendar months before March of 1996, the Department will consider all pilots who had duties in Minnesota as a flight trainer, to be covered under the federal provision regardless of whether they met the one flight per month ruling; and thus will not be subject to Minnesota tax on their pay if they were a non-resident. . . ." (T. 961-963).

For the year 2000, the record shows that Enyeart was present in Minnesota fulfilling his duties as a flight instructor for 57 days. (T. 1368-69). Excluding those days, Enyeart was present in the State far less than the requisite 183 days which the State represented to the Jury. Without those federally-forbidden days Enyeart could not be convicted. He had a right to rely on that official pronouncement.

Minnesota officials did not preface their adverse criminal actions against Enyeart and other pilots similarly situated with any civil or administrative proceedings to determine whether they fell within the federal preemption. Instead, without first exhausting civil remedies, and in fact acting contrary to the announced official position of non-taxation by the Department of Revenue, State officials leapt to initiate criminal felony charges. Enyeart was forced to defend in a forum where discovery and other civil trial aids are denied. He was forced to face such charges knowing that

an adverse decision would remove him from the industry in which he had devoted his working lifetime.

F. Minnesota's application of its Rule against Enyeart is in direct conflict with preemptive federal laws.

The Constitution provides that "Congress has the power to preempt state law." Crosby v. National Foreign Trade Council, 530 U.S. 363, 372 (2000). This preemption occurs in part by application of the supremacy clause of Article VI requiring that state judges are bound by federal laws made in pursuance of the Federal Constitution. Federal preemption may occur in three ways: expressly, impliedly or by a direct conflict. Express preemption occurs when Congress declares federal legislation to have preemptive effect. Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516-17 (1992).

Direct conflict preemption invalidates any state law which in fact conflicts with the superior federal law. It arises, absent an express or implied declaration of Congress or an agency's intent, when "compliance with both federal and state regulations is a physical impossibility," Florida Lime & Avocado Growers, Inc v. Paul, 373 U.S. 132, 142-43 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

Both the plain language of the federal statute and an understanding of the Congressional purpose supporting the statute are vital to a preemption determination. The "purpose of Congress is the ultimate touchstone" in express preemption cases. Retail Clerks v. Schermerhorn, 375 U.S. 96, 103 (1963).

In Aloha Airlines v. Director of Taxation of Hawaii, 464 U.S. 7 (1983), this Court was called upon to determine whether a Hawaii statute which imposed a property tax on the annual gross income of airlines was preempted by Section 7(a) of the Airport Development Acceleration Act of 1973. The federal statute prohibited a state from levying a tax, "directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom, but provides that property taxes are not included in this prohibition." Aloha, 464 U.S. at 7.

This Court determined that the federal statute preempted the state statute because the former proscribed the imposition of a particular kind of tax on an industry and Hawaii had in effect imposed just such a tax. Id. at 11-12. Moreover, the legislative history of the federal statute contained multiple references to the fact that the law was intended to prohibit the levying of State or local taxes. Id. at 13.

This case shows striking similarities to Aloha. In Aloha the federal statute prohibited certain state taxation of air carriers. Here, the federal statute limits the abilities of a State to double-tax the income of employees of the carriers. It is difficult to imagine how the federal statute could more clearly have preemptive effect: it is expressly entitled "State Taxation" and sets out the exclusive circumstances under which a state may tax the earnings of an airline pilot:

> "The pay of an employee of an air carrier having regularly assigned duties on aircraft in at least 2 states is subject to the income tax laws of *only* the following: (A) the State or political subdivision of the State that is the residence of the employee. (B) the State or political

> subdivision of the State in which the employee *earns* more than 50 percent of the pay received by the employee from the carrier." [Emphasis added]

Only two states may claim state taxing authority over a pilot such as Enyeart. The federal definition precludes counting any time spent within Minnesota by a non-domiciled pilot when that time is attributable to his flying into, out of, or over the state. Enyeart moved to preclude prosecution. It was denied. He objected to Jury instructions. His objection was overruled. Instead, the Court held that the Minnesota definition of "resident" prevailed. [App pp 18-27]

In effect, state law preempted federal law! Because the federal statute also uses the term "state of residence" and because the Court refused to acknowledge the differences in the definitions, it found no conflict. Hawaii unsuccessfully attempted a similar maneuver in Aloha.

In Aloha, the Hawaii legislature drafted a "property tax" bill measured by gross revenue. Hawaii then argued to the Court that this was permitted by the federal statute which specifically permitted "property taxes". 464 U.S. at 13-14. The federal statute precluded gross receipts taxes. This Court rejected Hawaii's argument holding that the "manner in which the state legislature has described and categorized [the tax identified by state statute] cannot mask the fact that the purpose and effect of the provision is to impose a levy upon the gross receipts of airlines." Aloha, 464 U.S. at 13.

Similarly, the fact that Minnesota undertakes to predicate "residency" from physical presence cannot mask the reality that the effect of that law is to permit taxation of a class of persons who could not otherwise be taxed: to wit, a

commercial pilot whose presence within the state for more than 183 days stems solely from his having flown into, out of, or over the state.

It ignores that *sole specific pro ration* allowed by the preemptive federal statute predicated from where income is *earned*. Simply put, if the pilot resides within the state or if his "scheduled flight time" within the state is greater than 50%, then the state has taxing authority. If not, taxing authority is prohibited.

In determining the "state of residence" of the pilot, we must look to Income Taxation – Carriers Act, Public Law 91-569, 84 Stat. 1499, Section 1112(a). That act provides that the state of residence of a transportation employee is to be determined by the "employee's residence, as shown on the employment records of any such carrier".

Minnesota's Rule defining "resident" as one who is present in the state more than 183 days (no matter the cause) and maintains an abode is entirely incongruous with the command of Congress. It ignores the Congressional term, "earns". Minnesota's law stands as an obstacle to the accomplishment of the federal purpose. It is preempted by direct conflict.

Direct conflict arises when "compliance with both federal and state regulations is a physical impossibility," Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the *full* purposes and objectives of Congress." Hines v. Davidowitz, 312 U.S. 52, 67 (1941). [Emphasis added]

What constitutes an "obstacle" is a "matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects". Crosby v. National Foreign Trade Council, 530 U.S. 363 (2000). This Court succinctly put it as such:

> "For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished – if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect – the state law must yield to the regulation of Congress within the sphere of its delegated power." Id. at 373, quoting, Savage v. Jones, 225 U.S. 501, 533 (1912).

The application of Minnesota's non-domiciliary law frustrates the purpose of the federal statute. First, the federal statute was specifically designed to insulate a certain class of individuals who travel in interstate commerce from multi-state withholding and reporting. Enyeart is within that class.

Secondly, Minnesota undertakes to tax Enyeart as a non-domiciliary because of his physical presence within the state more than 183 days when that presence is *directly caused in part by the requirements of his employment* that he be in the state to take off, land, or fly over. The federal statute was specifically designed to preclude states such as Minnesota from taxing income unless it was earned from flight time scheduled within the state which exceeded 50%. Congress anticipated that a pilot had to live somewhere in a state in which he was based, and that he might even own property

there when he was called upon by his employment to spend more than 183 days. Congress denied taxing authority on that basis. Congress confined it to earnings within the state.

Application of Minnesota's law increased to three the number of states that may claim taxes due from Enyeart. That directly conflicts with the federal statute's stated effect – that there may be only two. And importantly, without counting Enyeart's presence for work (his Northwest Airline base for most of the years in question), the State did not have taxing authority without counting days he was present for training others. Minnesota could not adduce evidence that he was present in the state for more than 183 days under that test. [See, Minn, Dept. of Revenue letter, supra at 13-14]

This presents the most obvious conflict with the Minnesota law. Under the federal statute, Enyeart's presence in any state, other than the state in which he resides, does not permit that state to tax his income unless his *scheduled flight time* there is greater than 50%. The Minnesota rule, by its terms, provides that *any presence, even work-occasioned,* on the part of Enyeart – for any part of a day – constitutes a full day spent in Minnesota. This violates the clear mandate of the federal statute. [Minn. Rule, App p 38, see, subp. 4; compare to 49 U.S.C. § 40116(f) App 26]

G. The application of the Minnesota law here thwarts and is a direct interference with the federal mission.

The Minnesota law, as applied to Enyeart, created an obstacle to federal goals. That interference is *much magnified* when contemplating its *detrimental effect* upon the federal mission. A stated purpose of the Act is to provide for and enhance the public safety. Pilots must be competently trained. Accordingly, pilots and flight instructors of the

highest capabilities are brought together in Minnesota for training purposes.

That contemplates free access and a friendly acceptance. State actions adverse, or perceived as adverse, to the personal interests of those considering participation describes a hostile atmosphere which each potential participant will reasonably consider. Perceptions of wrongful collections of taxes and felony prosecutions which might remove them from the very industry for which they are training will likely cause some instructors and pilots not to come to Minnesota. Their not coming, or even that chilling effect and resulting hesitation, constitute a direct State interference with federal goals. The logical result is that some commercial aircraft will likely be flown by pilots not trained to be the very best.

By virtue of federal regulation concerning terrorism, pilots *may not fly commercial aircrafts if convicted of a felony*. Because of this, Enyeart is banned for his lifetime from flying commercial aircraft or training other pilots. Although regarded as one of the most proficient in his profession and once sought out by those in the industry as one most capable to train other pilots, actions of Minnesota have taken from the industry, the public and him this capability.[3]

The legislative history of the federal Act demonstrates that potential multiple claims, ***civil*** in nature, made by various States imposed an undue burden on the industry and those employed in it. Congress deemed it necessary to

---

[3] Enyeart recently applied with Air India to train its pilots. He was selected from 7 semi-final world applicants for the job. He now awaits security clearance by Air India and fears the Minnesota felony conviction will eliminate him.

constrain those ***civil*** interferences. If Congress deemed those ***civil*** claims to constitute an undue burden, then the commencement of ***criminal*** proceedings with the resulting ***removal*** of those pilots from ***the industry itself*** must be deemed outrageous.

Prosecution of State felonies calculated ***to remove*** pilots and flight instructors from their employment for the obvious ***purpose of coercing others with fear*** into immediate withholding and reporting of asserted taxes is a direct interference with federal interests. It is a prohibited encroachment. This is greatly aggravated by the State's failure to provide any prior notice. It is rendered egregious when there is no opportunity afforded to first exhaust such issues by administrative or civil means. And it is additionally so when such actions are *undertaken in the face of previous official representations to the contrary.*

H. Federal law creates a sphere of personal activities for airline employees which the application of the Minnesota Rule encroaches.

Enyeart submits that superior federal law creates a sphere or zone of federally-protected activity, privilege, immunity or exemption for the industry, those in the industry, and him personally in his private life, intended to protect him from certain state encroachments. That includes distinct federal limitations on claims for certain state taxes, and especially in the means and manner adopted by Minnesota.

Stated otherwise, federal law guarantees to him certain personal choices as to where his "home" is and concerning his personal residence for purposes of taxation, voting, driver's license, etc., similar to those created by the Soldier's

and Sailor's Relief Act of 1940, as amended, 50 U.S.C. App. §§ 501, et seq. In preserving those personal choices, that federal guarantee supercedes any ability claimed by the State to make those choices for him or to usurp them from him.

I. The Minnesota Courts reflected bias.

To justify taxation the Court of Appeals alludes to Minnesota's "legitimate interest" in taxing a pilot present, "enjoying the services and protection the state affords." [App p 22] This reflects an incorrect bias that Enyeart experienced in the press and the Minnesota courts. They represent pilots present as persons who are abusing Minnesota by having residence in states which do not have income taxes. Prosecutors were quoted in the press as targeting pilots from states having no income taxes, who were portrayed as shirkers. What those critics conceal is that the governments of those states are sometimes, such as Alaska, *supported at a rate per capita higher than in Minnesota.* Those states merely utilize means *other than* taxes on *income* to support their governments.

Minnesota is required to pro rate income taxes with other states by allowing credits for income taxes paid them. It allows *none* for *other taxes paid.* Minnesota's claims upon such pilots should be more correctly viewed as unequally and unfairly doubling their tax burdens. Because there is no foreign income tax credit it must honor, Minnesota claims to unfairly usurp for itself *all* those taxes *upon income* which those states *could have imposed* had they opted to use that method of taxation but chose not to. In effect Minnesota is saying, "They don't tax it so we'll grab theirs too". By targeting pilots residing in states with no income taxes it is Minnesota, not the pilots, that schemes for unjust enrichment. This prosecution was calculated to foster that scheme.

J. Application of the Minnesota law and Rule was both relevant to his conviction and highly prejudicial.

The application of the Minnesota law to Enyeart as inappropriately embodied in the instructions to the Jury cannot be regarded as harmless. As this Court stated in Francis v. Franklin, 471 U.S 307, 324 (1985) ". . .where there exists a reasonable possibility that the jury relied upon an unconstitutional understanding of the law in reaching a guilty verdict, that verdict must be set aside." Here, error was not merely possible. It was a certainty.

* * *

REASON II

IN REVIEWING A STATE FELONY CONVICTION THE MINNESOTA COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY WHICH DENIES FEDERAL DUE PROCESS BY ALLOWING MINNESOTA TO PROCEED AGAINST HIM ON CONFLICTING THEORIES THAT HE WAS A DOMICILED RESIDENT, OR THAT HE WAS NON-DOMICILED BUT PRESENT MORE THAN 183 DAYS, AND BY NOT REQUIRING THE JURORS TO UNANIMOUSLY AGREE ON ONE THEORY.

Enyeart requested an instruction that the jury be required to unanimously agree on which theory of residency it found the State had proven. (T. 43-48). This was denied and the Jurors were instructed that they could find under either theory. [See also, App pp 17-18 (beginning at II)]

A. There is no commonality in the two theories presented and the Jury was not required to agree unanimously on one.

Allowing the Jury members to independently arrive at a verdict of guilty under two conflicting theories and not requiring them to agree unanimously upon one violates the fundamental fairness and the rationality guaranteed by Fourteenth Amendment Due Process as described in Schad v. Arizona, 501 U.S. 624 (1991).

In Schad this Court found no error when Jury members were allowed to arrive at a first degree murder conviction under either a premeditated or felony murder theory. The underlying reason for allowing such independent theories was that *there was a mens rea element common* to both.

Here concerning Enyeart, two conflicting theories were submitted to the Jury:

> 1. That he was always a domiciliary of Minnesota and set out with intent to evade Minnesota taxes by claiming to be a resident of Alaska.
>
> 2. That although he was a bona fide domiciliary of Alaska, he was present in Minnesota more than 183 days and therefore is deemed by Minnesota to be a resident.

The first theory presupposes an evil intent – an intent to purposely evade Minnesota taxation. This requires a showing that his claim of being an Alaska domiciliary was not in good faith, untrue and done solely from bad motives, that is, to evade Minnesota taxation.

The second theory assumes that he was a bona fide domiciliary of Alaska whose resident status in Minnesota arises merely from his being present there more than 183 days. It requires no evil intent. It may innocuously stem solely from mistake, inadvertence or employer cause.

The elements are totally different. The first involves evil intent. The second element involves non-evil acts or omissions. There is no commonality of wrongful design as this Court found in Schad. To lump these conflicting theories together and allow some Jurors to find one and others to find another amounts to little more than advising the Jury that they may convict if they believe the defendant might have committed some serious crime and should be punished!

* * *

REASON III

IN REVIEWING A STATE FELONY CONVICTION THE MINNESOTA COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY WHICH DENIES FEDERAL DUE PROCESS BY HOLDING THAT MINNESOTA LAW DEFINING "DOMICILED RESIDENT" IS NOT IMPERMISSIBLY VAGUE AND INDEFINITE.

Enyeart timely made this objection to the admission of Exhibit 40 which was a copy of the Minnesota Domiciled Resident Rule 8001.0300 (T. 1370-1373). [App pp 8-17; 33]

A. The Minnesota law concerning domicile and non-domiciliary residence is vague and indefinite.

Enyeart was charged with violating Minn. Stat. § 289A.63. That statute contains no definition of "domiciled resident". The State had to rely upon Minn. R. 8001.0300 to supply that definition. Enyeart objects that the statute, and even the statute when augmented by the Rule, does not meet Due Process requirements relating to standardless enforcement and adequate notice due to its being vague and indefinite. Kolender v. Lawson, 461 U.S.352 (1983).

Agent Clancy, an avowed expert on the Rule, effectively testified that the law, Rule, Regulations and Department of Revenue are replete with vagaries. They provide, inter alia, no guidelines to situations where a person is registered to vote in one state but does not vote anywhere, what constitutes location of employment for an airline pilot, what to do when a vehicle is registered in one state and located in another, what to do when a person regularly receives mail in more than one state, whether location of schools and children is relevant when a person is divorced without primary custody and what to do when the indicia are ambiguous. [T. 81-98] [See also, App pp 35-37 and App p 31]

Agent Clancy offered that 2 of the 27 factors would be sufficient to establish residency, but acknowledged that the regulations provide no suggestion on how to weigh the factors where, as here, some indicated both ways. Astonishingly (and contrary to the very backbone of our criminal justice system), Agent Clancy suggested that, although there were no state publications or guidance on how to apply the 26 factors, it was the duty of each taxpayer to apply his "common sense and intelligence" to personally

determine whether he is in compliance! The State's leading expert witness was unable to reasonably explain the *distinction between an* "act" and a "declaration". (T. 136-138)

Minnesota courts have ruled that "Minnesota is a code state, that is, the legislature has exclusive province to define by statute what acts constitute a crime". State v. Merrill, 450 N.W.2d 318, 321 (Minn. 1990). This prosecution did not meet that standard. The statute is incomplete without the Rule. The statute fails to provide that which Minnesota itself says is due. Hicks v. Oklahoma, 447 U.S. 343 (1980). As in United States v. Mallas, 762 F.2d 361, 363 (CA 4 1985), the court should have refused to impose the "grave penalties" that would rest upon the government's "unsubstantiated theory of tax law."

* * *

REASON IV

IN REVIEWING A STATE FELONY CONVICTION THE MINNESOTA COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY WHICH DENIES FEDERAL DUE PROCESS BY ALLOWING SUBSTANTIVE EVIDENCE TO THE JURY STATING THAT ENYEART HAD THE DUTY TO MAINTAIN AND PRODUCE RECORDS TO PROVE THAT HE WAS NOT A RESIDENT, THEREBY IMPERMISSIBLY PLACING THE BURDEN OF PROOF UPON HIM AS A CRIMINAL DEFENDANT

Enyeart made timely objection to the admission of Exhibit 40 and particularly subparagraph 5. (T. 370-73, 390). That document recites that a non-domiciled resident taxpayer is required to maintain records that he can produce to prove that he spent more than 183 days outside of Minnesota. The prosecutor argued to the Jury about the absence of records. (T. 494). [App pp 22-23]

A. Evidence suggesting that he must prove non-residence violates federal Due Process.

A Minnesota Rule reciting that Enyeart had the duty to maintain records of non-residence was allowed to the jury. This was a denial of Due Process. It served to impermissibly remove from, lessen or cloud that onus upon the State to prove guilt beyond a reasonable doubt. It purports to shift the ultimate risk of persuasion to the criminal defendant. In re Winship, 397 U.S. 358 (1970).

Such error was not harmless. Mere statements of counsel in closing argument cannot be reasonably expected to outweigh introduction of a written Official Rule. Without counting federally-prohibited days, other evidence was not "overwhelming" as found by the Court of Appeals.

* * *

CONCLUSION AND PRAYER

The decision of the Court of Appeals for the State of Minnesota, and the decision of the Supreme Court of Minnesota in refusing to review and correct it, conflict with superior federal law and decisions of this Court. Therefore, Randall Wayne Enyeart respectfully prays that this Court grant the Petition of Writ of Certiorari to review and reverse that decision and his felony conviction.

Respectfully submitted,

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RANDALL WAYNE ENYEART

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STATE OF MINNESOTA
IN COURT OF APPEALS
A03-360

State of Minnesota,
Respondent,

vs.

Randall Wayne Enyeart,
Appellant.

Filed March 23, 2004
Affirmed

Lansing, Judge

Hennepin County District Court
File No. 02012943

Mike Hatch, Attorney General, 1800 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Amy Klobuchar, Hennepin County Attorney, Jean E. Burdorf, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Robert D. Sicoli, Law Offices of Robert D. Sicoli, Ltd., 2520 Park Avenue South, Minneapolis, MN 55404; and

Sarah M. Aho, Gislason & Hunter, LLP, Suite 215E, 9900 Bren Road East, P.O. Box 5297, Minnetonka, MN 55343 (for appellant)

Considered and decided by Lansing, Presiding Judge, Peterson, Judge, and Halbrooks, Judge.

SYLLABUS

I. The department of revenue rule listing considerations for deciding whether a person is domiciled in Minnesota for income-tax purposes, Minn. R. 8001.0300 (2001), is not unconstitutionally vague.

II. The state's method for counting days spent in Minnesota for tax purposes is not preempted by 49 U.S.C. § 40116 (2000) in cases involving the domiciliary status of air-carrier employees.

OPINION

LANSING, Judge

Randall Enyeart was convicted for knowingly filing fraudulent tax returns, willfully evading income taxes, and intentionally evading motor-vehicle taxes, on the theory that he sought to avoid taxation by fraudulently creating the appearance that he was a resident of Alaska. On appeal from the judgment of conviction, Enyeart challenges the constitutionality of Minn. R. 8001.0300 (2001), the propriety of the jury instructions, the determination that federal law does not preempt Minnesota's method of calculating days spent in the state, and the admission of Minn. R. 8001.0300 into evidence. Because we conclude that the domicile rule is neither unconstitutionally vague not preempted by federal law and that the district court did not abuse its discretion either in instructing the jury or in admitting the domicile rule into evidence, we affirm.

FACTS

Randall Enyeart began working as a commercial pilot for Northwest Airlines (NWA) in 1979. He later married, had

two children, and moved to Minnetonka. His children were enrolled in Minnetonka public schools, and he claimed Minnesota residency on his federal and state income-tax returns from 1993 until 1997.

In August 1997, Enyeart and his wife separated. Enyeart remained in the family's Minnetonka home, and his former wife and children moved to Deephaven. In December 1997, Enyeart notified NWA electronically that he had changed his residency to Alaska effective September 1997. But he continued to live in the Minnetonka house and to homestead and insure it as a residence-until the house was sold in April 1999.

In early 1998, Enyeart completed a client-information form for accountant Linda Gasch, in which he indicated that he had moved his residence to Anchorage, Alaska. Relying on that information, Gasch listed Enyeart in his 1997 income-tax return as a part-year resident of Minnesota and a part-year resident of Alaska.

In April 1998, Enyeart filed a dissolution petition in which he indicated that he resided at the Minnetonka address and had been a Minnesota resident for not less than 180 days immediately preceding the commencement of dissolution proceedings. The dissolution judgment awarded Enyeart joint legal and physical custody of his two sons.

In November 1998, Enyeart applied for an Alaska driver's license. A certified record from Alaska indicates that Enyeart surrendered his Minnesota license. But according to Minnesota records, his license was not surrendered. Enyeart's 1995 Ford Expedition remained in Minnesota and was insured on the premise that it was garaged in Minnetonka. Also in November 1998, Enyeart registered to vote in Alaska. Up to that time, Enyeart had been registered to vote in Minnesota.

In connection with his 1998 state returns, Enyeart told Gasch that his residence continued to be in Alaska and that he was now flying international flights only. Based on that information, his Minnesota income taxes amounted to only $509. Had he claimed Minnesota residency in 1998, his state income tax would have been $14,471. Enyeart also claimed a homestead credit on his Minnetonka house for 1998 and received a $906 rebate. To be eligible for this property-tax rebate, the property must be (1) homesteaded, and (2) the taxpayer's "principal place of residence."

In April 1999, Enyeart purchased a townhouse in Shorewood, Minnesota. Enyeart paid the earnest money for the townhouse with a check from his NWA credit union bearing his Minnetonka address. And he bought homeowner's insurance. On May 3, Enyeart filed a homestead application for the townhouse, in which he indicated that he intended to occupy the property. Two weeks later, he filed a relative homestead application, listing his brother as the occupant and himself as the non-occupying owner. Enyeart listed the Minnetonka house as his current address.

Enyeart also executed a statement of occupancy in connection with a mortgage submitted for recording, indicating that he planned the townhouse to be his "principal residence." In an affidavit prepared by the title company for execution at closing, Enyeart indicated that he had lived at the Minnetonka address for the past ten years. And in a residential-loan application, Enyeart declared that he was the sole owner of the townhouse and that the townhouse was to be his principal residence. At closing, he provided the mortgage company with a copy of his Minnesota driver's license.

In September 1999, Enyeart's flight base moved from Minneapolis to Detroit, Michigan. Later that month, he

applied for an automobile loan through the NWA credit union. In the application, Enyeart listed the townhouse as his residence and stated that he had lived there for four months. In October 1999, he applied for a home-equity loan that had an occupancy requirement. Enyeart used the townhouse as security.

In November 1999, Enyeart bought a 2000 Ford Expedition from a dealer in Buffalo, Minnesota, and paid with a check bearing his Shorewood address. The purchase agreement listed a Minnesota mailing address and Minnesota telephone numbers. Enyeart paid no sales tax on the vehicle because he told the dealer that he planned to transfer title to Alaska. Had he claimed Minnesota residency, the tax due on the vehicle would have been $1,422. 18. Enyeart registered the Ford Expedition in Alaska in January 2000.

Even though he claimed Alaska residency and was based out of Detroit, Enyeart continued to have his NWA pay stubs and withholding information sent to the Minneapolis/St. Paul base during 1999 and 2000. Enyeart did not file a 1999 Minnesota income-tax return, claiming that he was an Alaska resident. Had he claimed Minnesota residency in 1999, he would have had to pay $11,454 in state income taxes.

In January 2000, Enyeart told Hennepin County officials that he had been a Hennepin County resident for the past ten years and had resided at the Shorewood address for the past nine months. In February 2000, he stated under oath that he lived at the Shorewood address and had lived there since April 1999. And in September 2000, he signed and filed emergency-notification cards with his sons' school that listed the Minnetonka address and Minnesota telephone numbers as his contact information.

In February and August 2000, Enyeart listed the Shorewood address in his application for a medical certificate

of fitness, which he needed to maintain his commercial-pilot's license. Before then, he had used the Minnetonka address. Enyeart listed his Alaska address for the first time in February 2001. In December 2000, Enyeart applied for a second home-equity loan. Once again, Enyeart listed the Shorewood address as his current address and used the townhouse as security.

In his 2000 federal income-tax return, Enyeart continued to claim Alaska as his state of residence. Had he claimed Minnesota residency and filed a state income-tax return, he would have had to pay $15,036 in state income taxes.

Using Enyeart's flight schedules, bank records, Federal Aviation Administration records, and court documents, the state calculated the number of days Enyeart was present in Minnesota during the last three months of 1997 and the calendar years 1998, 1999, and 2000. The state attributed a day to Minnesota residency only if there was evidence that Enyeart was beginning or ending a flight in Minnesota or that he was conducting business in the state (closing a loan or attending a doctor's appointment, for example). The state did not count days in which Enyeart flew into or out of Minnesota in transit to another state or days in which Enyeart conducted business in another state. The state documented that in 1998 Enyeart spent 194 days in Minnesota and only twelve full days in Alaska. In 1999, Enyeart was in Minnesota 144 days and in Alaska two full days. In 2000, Enyeart was in Minnesota 186 days and in Alaska two partial days.

Enyeart's bank records indicate that between January 1998 and December 2000, Enyeart made 240 ATM transactions in Minnesota. During the same period, he made only three transactions in Alaska. Enyeart's bank records were mailed to his Minnetonka address until he moved in April 1999. His bank records for the remainder of 1999 and

2000 were mailed to his Shorewood address. Enyeart's cell phone records also show that the vast majority of calls were made to locations within Minnesota.

The Minnesota Department of Revenue (DOR) began investigating Enyeart after receiving a tip from Enyeart's brother in August 1999, indicating that Enyeart was evading state income taxes. Investigators discovered that Enyeart was listed in metro-area phonebooks at either his Minnetonka or his Shorewood address from 1997 until 2000.

In March 2001, Enyeart attempted to have the relative homestead status on the Shorewood residence removed for the tax year 2000 because his brother had moved out. Enyeart backdated the letter requesting the removal to January 1999. The relative homestead status was removed in 2001 and a penalty was assessed. On the day he requested the removal of the relative homestead status, Enyeart also contacted his insurance company to change his mailing address from Minnesota to Alaska.

In June 2001, Enyeart gave DOR agents a handwritten letter from his father and a typewritten letter from fellow NWA pilot Tim Branaman, indicating that Enyeart lived in Alaska. He also gave the DOR a photocopy of a lease agreement he signed with a storage facility in Minnesota. The photocopy, dated September 1999, showed an address and telephone number in Anchorage. The original, however, which DOR agents later obtained, listed Enyeart's Shorewood address and Minnesota telephone numbers.

During a search of Enyeart's Shorewood residence in September 2001, DOR agents did not find any financial records for the years 1997 to 2001. Agents discovered that Enyeart's computer hard drive contained a letter identical to the letter, purportedly from his father, that Enyeart had submitted to the DOR, and a proposed letter directed to the DOR, purportedly from Branaman. In his testimony

Branaman admitted that Enyeart essentially wrote the letter that actually went to the DOR. The first page of the letter on Enyeart's hard drive outlines the history of their friendship and Branaman's gratitude to Enyeart for providing him a place to stay in Minneapolis in the early years of their employment. At the bottom of the first page, the letter states "we have had the opportunity to experience the following in Alaska together." At the top of the second page Enyeart wrote: "(use your imagination here)" and left ten blank lines.

A search of the Anchorage condominium revealed that Enyeart had no personal belongings there. The maintenance man for the condominium complex testified that although Enyeart received mail at the condo, he had seen Enyeart only one time before September 2001.

In March 2002, the state charged Enyeart with one count of filing a fraudulent tax return for the 1998 tax year in violation of Minn. Stat. § 289A.63, subd. 2(a) (2002); two counts of tax evasion for the 1999 and 2000 tax years in violation of Minn. Stat. § 289A.63, subd. 1(a) (2002); and two counts of failure to pay motor-vehicle taxes in violation of Minn. Stat. § 297B.10(a) (2002). The court denied Enyeart's motion to dismiss the charges on grounds of vagueness, reasoning that the statutes under which Enyeart was charged were not unconstitutionally vague. A jury subsequently found Enyeart guilty as charged. This appeal followed the judgment of conviction and sentence.

ISSUES

I. Is Minnesota's domicile rule unconstitutionally vague?

II. Did the district court commit prejudicial error by refusing to instruct the jury that they had to agree on which theory of residency the state had proved?

III. In cases involving the non-domiciliary status of an air-carrier employee, does federal law preempt the state's method for counting days spent in Minnesota for income-tax purposes?

IV. Did the district court impermissibly shift the burden of proof to Enyeart by admitting into evidence a copy of the rule that requires taxpayers claiming to be nonresidents to have available for examination adequate records to substantiate that they spent more than one-half of the tax year outside Minnesota?

ANALYSIS

I

Enyeart first argues that the rule governing whether a person is domiciled in the state for income-tax purposes is "too ill-defined to form the basis for a criminal prosecution." Specifically, Enyeart argues that the rule is unconstitutionally vague on its face and as applied because it does not specify what factors a taxpayer must satisfy to establish domicile in a particular state and invites arbitrary and discriminatory enforcement. We disagree.

Laws are presumed to be constitutionally valid. Minn. Stat. § 645.17(3) (2002); *Associated Builders & Contractors v. Ventura,* 610 N.W.2d 293, 298 (Minn 2000). The presumption of constitutional validity governs the adjudication of constitutional challenges until disproved beyond a reasonable doubt. *Hickman v. Group Health Plan,*

Inc., 396 N.W.2d 10, 13 (Minn. 1986). Courts have a duty to uphold legislative enactments as reasonably certain when possible, and should "resort to all acceptable rules of construction to discover a competent and efficient expression of the legislative will." *State v. Suess,* 236 Minn. 174, 180, 52 N.W.2d 409, 414 (1952). The courts' power to declare a statute unconstitutional should be exercised "with extreme caution and only when absolutely necessary." *State v. Fingal,* 666 N.W.2d 420, 423 (Minn. App.2003), *review denied* (Minn. Oct. 21, 2003).

The void-for-vagueness doctrine requires that statutes define an offense (1) with sufficient definiteness and certainty that persons of ordinary intelligence can understand what conduct is prohibited or mandated, and (2) in a manner that does not encourage arbitrary and discriminatory enforcement. *Kolender v. Lawson,* 461 U.S. 352, 357, 103 S. Ct. 1855, 1858 (1983); *State v. Newstrom,* 371, N.W.2d 525, 528 (Minn. 1985). The doctrine is based on fairness and is not designed to "convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited." *Colten v. Kentucky,* 407 U.S. 104, 110, 92 S. Ct. 1953, 1957 (1972), *quoted in State v. Willenbring,* 454 N.W.2d 268, 270-71 (Minn. App. 1990), *review denied* (Minn. May 30, 1990). The vagueness doctrine does not preclude the use of broad, flexible standards that require persons subject to a statute to exercise judgment. *State v. Kuluvar,* 266 Minn. 408, 417, 123 N.W.2d 699, 706 (1963). Instead, uncertainty invalidates a statute only when those subject to it cannot determine with reasonable certainty whether a particular act is forbidden or permitted. *Id.*

A person is a resident for purposes of taxation if the person is either (1) domiciled in Minnesota, or (2) domiciled outside Minnesota but maintains a place of abode in the state and spends in the aggregate more than one-half of the tax year in Minnesota. Minn. Stat. § 290.01, subd. 7 (2002). The term "domicile" means

> the bodily presence of an individual person in a place coupled with an intent to make such a place one's home. The domicile of any person shall be that place in which that person's habitation is fixed, without any present intentions of removal therefrom, and to which, whenever absent, that person intends to return.

Minn. R. 8001.0300, subp. 2 (2001). The most significant factor in determining domicile is the person's intent to remain in a fixed place. *Manthey v. Comm'r of Revenue,* 468 N.W.2d 548, 550 (Minn. 1991).

Rule 8001.0300 lists twenty-six items courts must consider in determining whether a person intended to make a particular state his or her home:

> A. location of domicile for prior years; B. where the person votes or is registered to vote, but casting an illegal vote does not establish domicile for income tax purposes; C. status as a student; D. classification of employment as temporary or permanent; E. location of employment; F. location of newly acquired living quarters whether owned or rented; G. present status of the former living quarters, i.e., whether it was sold, offered for sale, rented, or available for rent to another;

H. whether homestead status has been requested and/or obtained for property tax purposes on newly purchased living quarters and whether the homestead status of the former living quarters has not been renewed; I. ownership of other real property; J. jurisdiction in which a valid driver's license was issued; K. jurisdiction from which any professional licenses were issued; L. location of the person's union membership; M. jurisdiction from which any motor vehicle license was issued and the actual physical location of the vehicles; N. whether resident or nonresident fishing or hunting licenses purchased; O. whether an income tax return has been filed as a resident or nonresident; P. whether the person has fulfilled the tax obligations required of a resident; Q. location of any bank accounts, especially the location of the most active checking account; R. location of other transactions with financial institutions; S. location of the place of worship at which the person is a member: T. location of business relationships and the place where business is transacted ; U. location of social, fraternal, or athletic organizations or clubs or in a lodge or country club, in which the person is a member; V. address where mail is received; W. percentage of time (not counting hours of employment) that the person is physically present in Minnesota and the percentage of time (not counting hours of employment) that the person is physically present in each jurisdiction other than

> Minnesota; X. location of jurisdiction from which unemployment compensation benefits are received; Y. location of schools at which the person or the person's spouse or children attend, and whether resident or nonresident tuition was charged; and Z. statements made to an insurance company, concerning the person's residence, and on which insurance is based.

Minn. R. 8001.0300, subp. 3 (2001).

Rule 8001.0300 does not specify the amount of evidence necessary to prove an intention to change one's domicile. On the contrary, the rule provides that "[n]o positive rule can be adopted with respect to the evidence necessary to prove an intention to change a domicile."

Minn. R. 8001.0300, subp. 2; *see also Manthey,* 468 N.W.2d at 550 (stating that "[n]o magic formula exists for determining a change in one's domicile"). Instead, a person's intention to change domiciles is proved by acts and declarations, and of the two forms of evidence, acts shall be given more weight than declarations. Minn. R. 8001.0300, subp. 2.

In addition to the twenty-six factors the rule lists, several presumptions are relevant to a determination of domicile. First, the place where a person's family is domiciled is presumed to be that person's domicile, and the domicile of a parent who has legal custody of a child is presumed to be the child's domicile. Minn. R. 8001.0300, subp. 2. Additionally, one's domicile is presumed to be the place where one lives. *Id.* And once domicile is established, it is presumed to continue until the contrary is shown. *Id.*; *see Comm'r of Revenue v. Stamp,* 296 N.W. 2d 867, 870 (Minn. 1980). The

absence of an intention to abandon an existing domicile is equivalent to an intention to retain it. Minn. R. 8001.0300, subp. 2.

To succeed in a facial challenge to vagueness outside the context of the First Amendment, a complainant must demonstrate that the law is impermissibly vague in *all* its applications. *Vill. of Hoffman Estates v. Flipside,* 455 U.S. 489, 495-96, 102 S. Ct. 1186, 1191 (1982). Enyeart argues that the domicile rule is facially vague because it does not indicate how many of the twenty-six factors it lists are necessary to establish domicile. Enyeart specifically argues that because expert testimony from a DOR agent failed to show a regulatory scheme with a fixed method for weighing the factors, a taxpayer could not exercise the required criminal intent to violate the requirements. We disagree.

The DOR agent testified that the rule does not provide a fixed method for weighing the domicile factors, but it nonetheless provides guidance. As an example, he noted that subpart 2 of the rule informs taxpayers that their actions will be given more weight than their declarations. The agent pointed out that the rule is not "extremely difficult," and that the rule's application is governed by "common sense."

The fact that taxpayers must rely on common sense and intelligence to determine whether their conduct complies with the law does not render the law unconstitutionally vague on its face. *See Kuluvar,* 266 Minn. at 417, 123 N.W.2d at 706 (providing that use of broad, flexible standards requiring exercise of judgment is not constitutionally precluded). A law that is flexible and reasonably broad is nonetheless constitutional if it is clear what the law as a whole proscribes. *Grayned v. City of Rockford,* 408 U.S. 104, 110, 92 S. Ct. 2294, 2300 (1972). A criminal statute need not be drafted with absolute certainty or mathematical precision. *See, e.g., Suess,* 236 Minn. At 180, 52 N.W.2d at 414. Instead, to

comply with due process, criminal statutes drafted in general and flexible terms must furnish only a test based on criteria that "[persons] of common intelligence who come in contact with the statute may use with reasonable safety in determining its command." *Id.* Specificity will always be limited by the necessity to draft statutes that are general enough to address the diversity of human conduct and specific enough to provide adequate notice. *See Colten,* 407 U.S. at 100, 92 S. Ct. at 1957. A statute that is flexible and reasonably broad will thus be upheld if people of common intelligence do not have to guess at what the statute means or differ as to its application. *Suess,* 236 Minn. at 180, 52 N.W.2d at 413-14. All that is required is reasonable certainty. *Id.*

Although the domicile rule does not provide a magic formula for determining when a taxpayer has established an intention to change domiciles – relying instead on an exhaustive list of determinative factors – it specifies a standard of conduct that ordinary people of reasonable intelligence can understand. Contrary to Enyeart's claim, the statute does not defy common understanding but *relies* on it, and few people – if any – could misapprehend what they need to do to establish an intention to change domiciles. The theoretical possibility of an erroneous classification of a taxpayer as a domiciliary resident is insufficient to establish that the statute provides no comprehensible standard of conduct at all. The rule is thus not unconstitutionally vague on its face.

Enyeart next argues that the rule is vague as applied to him, because some of the regulatory factors support a finding that he was an Alaska resident while others favor a finding that he was a Minnesota resident. Contrary to Enyeart's argument, however, this case is a paradigm of domiciliary resident.

After declaring a change of domicile in 1997, Enyeart continued to live in his Minnetonka house until 1999, and he insured and homesteaded the house. He subsequently bought the Shorewood townhouse and signed a statement of occupancy and a residential-loan application in which he indicated that he planned the townhouse to be his principal residence. Enyeart bought homeowner's insurance and filed a homestead application for the townhouse in 1999.

Although his flight base moved from Minneapolis to Detroit in 1999, Enyeart continued to have his bank records and his NWA pay stubs and withholding information sent to the Minneapolis/St. Paul base. And he continued to list his Minnetonka or Shorewood address as his current address on his checks, in his dissolution petition, on loan application, on applications for homestead status and medical certificates of fitness, and on school-emergency-notification cards for his sons. Enyeart also retained his Minnesota driver's license and used it routinely for identification purposes. Not surprisingly, in January 2000, Enyeart told Hennepin County officials that he had been a Minnesota resident for the past ten years. These facts clearly reflect Enyeart's intention to remain in Minnesota.

The number of days Enyeart spent in Minnesota and Alaska confirm Enyeart's intention to make Minnesota his home. Records show that in 1998, Enyeart spent 194 days in Minnesota and twelve days in Alaska. In 1999, he spent 144 days in Minnesota and two days in Alaska. And in 2000, he spent 186 days in Minnesota and two partial days in Alaska. Enyeart kept no personal belongings in his Alaska condominium, and he made only three ATM transactions in Alaska between January 1998 and December 2000. By contrast, during the same period, he made 240 ATM transactions in Minnesota.

Finally, Enyeart's fraudulent attempts to create the appearance that he was an Alaska resident leave no doubt as to his intent to remain in Minnesota while obtaining the tax benefits of claiming to be an Alaska resident. Enyeart backdated changes he made in NWA's computerized employee database that identified his residence. He also backdated a letter he wrote in March 2001 to remove the relative homestead status on the Shorewood townhouse for the tax year 2000. In addition, Enyeart drafted a letter for his father to send to the DOR, indicating that Enyeart was a resident of Alaska. And he drafted a letter for fellow pilot Tim Branaman to send the DOR, in which he urged him to "[u]se [his] imagination" to write about experiences they had in Alaska. Finally, Enyeart submitted to the DOR a photocopy of a mini-storage receipt that had been altered to reflect his Anchorage address and phone number. Enyeart's claim that the regulatory scheme is vague as applied to him lacks merit.

II

Enyeart also argues that the district court committed prejudicial error by refusing to instruct the jury that they had to agree unanimously on which theory of residency the state had proved. Specifically, Enyeart argues that the district court should not have permitted the state to proceed on the theory that he was a domiciliary resident, and that because the court failed to give his requested instruction on unanimity, it is impossible for a reviewing court to determine whether the jury found him guilty on the theory that he was a domiciliary resident or a nondomiciliary resident. We do not agree.

First, as we have just concluded, the revenue department rule is not unconstitutionally vague. The state, therefore,

properly prosecuted Enyeart on both residency theories. Second, the jury's finding of guilt on the charges based on his 1997 and 1999 conduct, which were premised on a domiciliary-resident theory, clearly establishes that the jury believed Enyeart was a domiciliary resident. Finally, "unanimity is not required with respect to the alternative means or ways in which the crime can be committed." *State v. Begbie,* 415 N.W.2d 103, 106 (Minn. App. 1987) (quotation omitted), *review denied* (Minn. Jan. 20, 1988); *see also Schad v. Arizona,* 501 U.S. 624, 633, 111 S. Ct. 2491, 2497 (1991) (holding that submission to jury of alternative theories of criminal charge, without requiring jury's agreement on a theory, was not unconstitutional); *State v. Day,* 501 N.W.2d 649, 653 (Minn. App. 1993) (holding that appellant's right to unanimous verdict not violated when instruction allowed jury to convict without specifying which alternative theory of guilt applied). Instead, "[u]nanimity is required only with respect to the ultimate issue of the defendant's guilt or innocence of the crime charged." *Begbie,* 415 N.W.2d at 106 (quotation omitted).

III

Enyeart brought a pretrial motion to dismiss charges premised on the theory that he was a nondomiciliary resident, claiming that 49 U.S.C. § 40116 (2000) preempts the state's method of calculating days spent in Minnesota in cases involving the nondomiciliary status of air-carrier employees. The district court denied the motion. Enyeart subsequently moved for a jury instruction requiring the jury not to count days he flew in, out of, or over the state in determining residency. The court denied the motion, and instead instructed the jury that

> a person shall be treated as present in Minnesota on any day if the person is physically present in the State of Minnesota at any time during the day. However, a person in transit between two points outside of Minnesota who is physically present in Minnesota less than 24 hours will not be treated as present in Minnesota.

Enyeart now argues that because federal law preempts the domicile rule's method for counting days spent in Minnesota, the district court abused its discretion by denying his requested instruction.

District courts have considerable latitude in selecting the language of jury instructions. *State v. Gray,* 456 N.W.2d 251, 258 (Minn. 1990). But jury instructions may not materially misstate the law. *State v. Pendleton*, 567N.W.2d 265, 269 (Minn. 1997). We review jury instructions to determine whether, taken as a whole, they fairly and accurately state the law. *Gray*, 456 N.W.2d at 258.

In determining whether state law is preempted by federal law, a reviewing court's sole task is to ascertain Congress's intent. *See Cal. Fed. Sav. & Loan Ass'n v. Guerra,* 479 U.S. 272, 280, 107 S. Ct. 683, 689 (1987). When Congress legislates in a field traditionally occupied by the states, this court must start with the presumption that the states' historic police powers were not to be superseded by the federal law unless that was the clear and manifest purpose of Congress. *Dahl v. Charles Schwab Co.,* 545 N.W.2d 918, 922 (Minn. 1996).

Federal law preempts state law when Congress expressly states that state law is preempted. *Cal. v. ARC Am. Corp.*, 490 U.S. 93, 100, 109 S. Ct. 1661, 1665 (1989). Absent an express statement by Congress, congressional intent to preempt state law in a particular area may be inferred when

the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress left no room for supplementary state regulation.

Barnett Bank of Marion County, N.A. v. Nelson, 517, U.S. 25, 31, 116 S. Ct. 1103, 1108 (1996). When Congress has not occupied the field, state law may nevertheless be preempted when compliance with both state and federal law is impossible, *Fla. Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132, 142-43, 83 S. Ct. 1210, 1217 (1963), or when state law is in 'irreconcilable conflict" with federal law, *Rice v. Norman Williams Co.,* 458 U.S. 654, 659, 102 S. Ct. 3294, 3299 (1982). An irreconcilable conflict exists when a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz,* 312 U.S. 52, 67, 61 S. Ct. 399, 404 (1941).

Preemption, however, should not be "lightly presumed." *Guerra,* 479 U.S. at 281, 107 S. Ct. at 689. To avoid a finding of preemption, a federal law and a state system of regulation should be read in tandem, particularly in cases where the state law or regulation at issue touches on traditional areas of state sovereignty, such as taxation. *See ARC Am. Corp.*, 490 U.S. at 101, 109 S. Ct. at 1665; *Merrill Lynch, Pierce Fenner & Smith, Inc. v. Ware*, 414 U.S. 117, 127, 94 S. Ct. 383, 389 (1973).

In relevant part, 49 U.S.C. § 40116 provides that the pay of air-carrier employees is subject to taxation by only two states: the state where the employee resides and the state where the employee earns more than fifty percent of his or her pay from the carrier. *Id.*, (f)(3)(A), (B). The bill "reserves to the individual states the present practice of taxing substantial compensation which is earned by a non-resident," but it "limit[s] that practice . . . to states wherein more than 50 per centum of the non-resident interstate carrier

employee's compensation is earned." S. Rep. No. 91-1261, at 5 (1970), *reprinted in* 1970 U.S.C.C.A.N. 5039, 5043.

Minn. Stat. § 290.01, subd. 7 (2002) defines "resident" as "any individual domiciled outside the state who maintains a place of abode in the state and spends in the aggregate more than one-half of the tax year in Minnesota." For tax purposes, presence within the state for any part of a calendar day constitutes a day spent in the state. *Id.* But "a person in transit between two points outside Minnesota who is physically present in Minnesota less than 24 hours, will not be treated as present in Minnesota on any day during transit." Minn. R. 8001.0300, subp. 4 (2001). Enyeart's argument that the federal statute preempts the state's method for calculating the number of days a taxpayer spends within and without Minnesota ignores the rule.

Enyeart argues that state law conflicts with the federal statute by equating residency with physical presence in the state and thereby allowing taxation by more than the state of residency or the state where the employee earns more than fifty percent of his or her pay form the airline. But state law does not equate residency with mere physical presence. On the contrary, it *precludes* such an equation by requiring that in determining the number of days spent in the state, time spent by a taxpayer in transit *not* be counted as time spent in Minnesota. Contrary to Enyeart's argument, a person's mere presence in the state does not render him or her liable to state taxation. Instead, presence in the state counts only if the person subject to taxation remains in the state for more than twenty-four hours. *See* Minn. Stat. § 290.01, subd. 7; Minn. R. 8001.0300, subp. 4.

Enyeart also argues that state law thwarts or stands as an obstacle to the federal statute's objective of limiting multistate taxation. But by providing that a person in transit between two points outside Minnesota who spends less than

twenty-four hours in the state will *not* be treated as present within the state, the rule avoids taxing air-carrier employees with minimal or transitory contacts with the state and thereby furthers the federal goal of avoiding multistate taxation.

Enyeart urges this court to read the federal statute to preclude a state from considering any part of a day in which an air-carrier employee works in Minnesota as a day spent in the state, claiming that a different reading would allow the state to tax income generated from less than fifty percent of scheduled flight time. But the state's residency requirements are not based on a pilot's scheduled flight time within the state but on the pilot's physical presence in the state for at least twenty-four hours, enjoying the services and protections the state affords. A rule that would make residence contingent on flight time would unduly limit the state's legitimate interest in taxing state residents, an interest the federal statute expressly recognizes by permitting states to tax pilots who are residents.

Because Minn. Stat. § 290.01, subd. 7 is not in "irreconcilable conflict" with 49 U.S.C. § 40116, it is not preempted. The district court's instruction accurately stated the law and does not, therefore, constitute an abuse of discretion.

VI

Enyeart last argues that the district court committed prejudicial error by admitting Minn. R. 8001.0300 (2001) into evidence without redacting the portion of the rule that requires any person claiming to be a nonresident of the state to "have available for examination adequate records to substantiate that more than one-half of the tax year was spent outside Minnesota." *Id.*, subp. 5. Enyeart claims that the

rule impermissibly shifted to him the burden of proving his innocence.

Evidentiary rulings rest within the district court's broad discretion and will not be reversed absent an abuse of that discretion. *State v. Lee,* 645 N.W.2d 459, 465 (Minn. 2002). A defendant claiming that the district court abused its discretion in admitting evidence bears the burden of proving both error and prejudice. *Id.* An error is prejudicial only if it "substantially influence[s] the jury to convict." *Id.*

In every criminal prosecution, the state has the burden of proving the charged crime beyond a reasonable doubt. *State v. Robinson,* 604 N.W.2d 355, 362 (Minn. 2000). The tax-evasion charges in this case required the state to prove beyond a reasonable doubt that Enyeart was either a domiciliary or a nondomiciliary resident of Minnesota. The court so instructed the jury.

Minn. R. 8001.0300, subp. 5, requires taxpayers claiming to be nonresidents of Minnesota to maintain adequate records to substantiate their claim that they spent more than one-half of the tax year outside Minnesota. Admittedly, the rule places an administrative burden on taxpayers to maintain tax records and permits an inference that taxpayers who do not maintain such records might have been lying about their nonresident status. But the rule does not release the state of its obligation of proving beyond a reasonable doubt, with or without the taxpayer's records, that the taxpayer spent more than one-half the tax year in the state. And a conviction could not be based merely on evidence that the taxpayer failed to maintain adequate records.

The admission of the rule clearly did not help Enyeart; but it did not shift the burden of proof to him. The fact that the jury was able to draw negative inferences from Enyeart's failure to maintain records, does not render the rule

inadmissible. Inferences are permitted when they have a "reasonable relation to the circumstances of life as we know them," and the facts "are likely to be much more easily provable by the defendant than by the state, and the nature of the charge . . . make[s] it fair to call on the defendant to produce evidence." *State .v. Reps,* 302 Minn. 38, 51, 223 N.W.2d 780, 788-89 (1974) (quotation omitted).

Even if we were persuaded that the rule was improperly admitted, the error would be harmless because the jury was properly instructed that the state had the burden of proof and Enyeart's counsel stated in closing argument that the jury instructions controlled. Counsel specifically told the jury that Enyeart was not required to prove the number of days he spent outside the state and drew a distinction between civil cases, where the taxpayer has the burden of proof, and criminal cases, where the state is required to prove the number of days a taxpayer spends in the state. Most important, the evidence overwhelmingly establishes that Enyeart spent more than 183 days in the state during 1998 and 2000 and was thus a domiciliary resident of Minnesota. Any error in admitting subpart 5 of the rule is thus harmless.

DECISION

The district court correctly concluded that the domicile rule is neither unconstitutionally vague nor preempted by federal law. And the district court neither abused its discretion by refusing to instruct the jury that they had to agree on which theory of residency the state had proved not shifted the burden of proof by admitting rule 8001.0300 into evidence without redacting subpart 5.

Affirmed.

STATE OF MINNESOTA

IN SUPREME COURT

A03-360

State of Minnesota,

Respondent,

vs.

Randall Wayne Enyeart,

Petitioner.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Randall Wayne Enyeart for further review be, and the same is, denied.

Dated May 18, 2004

BY THE COURT:

/s/ Kathleen A. Blatz

Kathleen A. Blatz
Chief Justice

49 U.S.C. § 40116 entitled **"State Taxation"**

(f) **Pay of air carrier employees.**

(1) In this subsection –

(A) "pay" means money received by an employee for services.

(B) "State" means a State of the United States, the District of Columbia, and a territory or possession of the United States.

(C) an employee is deemed to have earned 50 percent of the employee's pay in a State or political subdivision of a State in which the scheduled flight time of the employee in the State or subdivision is more than 50 percent of the total scheduled flight time of the employee when employed during the calendar year.

(2) The pay of an employee of an air carrier having regularly assigned duties on aircraft in at least 2 States is subject to the income tax laws of only the following:

(A) the State or political subdivision of the State that is the residence of the employee.

(B) the State or political subdivision of the State in which the employee earns more than 50 percent of the pay received by the employee from the carrier.

49 USCS § 46301 **Civil penalties.**

(a) General penalty. (1) A person is liable to the United States Government for a civil penalty of not more than $1,000 for violating –

(A) chapter 401 [49 USCS §0§ 40101 et seq.] (except sections 40103(a) and (d), 40105, 40116, and 40117)...

49 USCS § 46316. **General criminal penalty when specific penalty not provided.**

(a) Criminal penalty. Except as provided by subsection (b) of this section, when another criminal penalty is not provided under this chapter [49 USCS §§ 46301 et seq.] a person that knowingly and willfully violates this part [49 USCS §§ 40101 et seq.], a regulation prescribed or order issued by the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) under this part [49 USCS §§ 40101 et seq.], or any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title shall be fined under title 18. A separate violation occurs for each day the violation continues.

(b) **Nonapplication**. Subsection (a) of this section does not apply to chapter 401 [49 USCS §§ 40101et seq.] (except sections 40103(a) and (d), 40105, 40116 and 40117), chapter 441 (except section 44109), chapter 445, chapter 447 (except section 44718(a), and chapter 449 (except sections 44902, 44904, and 44907-44909 of this title.

(Added Pub.L. 103-272, § 1(e), July 5, 1994, 108 Stat. 1240, and amended Pub.L. 105-102, § 3(d)(I)(D), Nov. 20, 1997, 111 Stat.2215.) ....

* * *

[I]n subsection (a) the word "prescribed" is added for consistency with the revised title. The words "condition, or limitation of" are omitted as surplus. The word "Administrator in

section 902(a) of the Federal Aviation Act of 1958 (Public Law 85-726, 73 Stat. 784) is retained on authority of 49:106(g). The words "or in section 1474 of this Appendix" are omitted because 49 App.:1474 is not included in the revised title. The words "shall be deemed guilty of a misdemeanor" are omitted for consistency with title 18. The words "and upon conviction thereof" are omitted as surplus. The words "shall be fined under title 18" are substituted for "shall be subject for the first offense to a fine of not more than $500, and for any subsequent offense to a fine of not more than $2,000" for consistency with title 18. ....

[Above excerpted from: "Federal Code and Criminal Rules", by West Publishing 1999 Edition]

* * * * *

INCOME TAXATION – INTERSTATE CARRIERS AND EMPLOYEES PUBLIC LAW 91-569; 84 STAT. 1499 [H.R. 10634]

Sec. 4. (a) Title XI of the Federal Aviation Act of 1958 is amended by inserting after section 1111 the following new section:

> "Sec. 1112. (a) No part of the compensation paid by any air carrier to an employee who performs his regularly assigned duties as such an employee on an aircraft in more than one State shall be withheld for income tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned: *Provided however*, That if the employee did not earn more than 50 per centum of his compensation from said carrier in any one State or subdivision thereof during the preceding calendar year, then withholding shall be required only for the State or subdivision of the employee's residence, as shown on the employment records of any such carrier; . . . .

Minn. Stat. 290.01 **Definitions**. (a) The term "resident" means any individual domiciled in Minnesota . . . .

(b) "Resident" also means any individual domiciled outside the state who maintains a place of abode in the state and spends in the aggregate more than one-half of the tax year in Minnesota . . . .

For purposes of this subdivision, presence within the state for any part of a calendar day constitutes a day spent in the state. Individuals shall keep adequate records to substantiate the days spent outside the state.

The term "abode" means a dwelling maintained by an individual, whether or not owned by the individual an whether or not occupied by the individual, an includes a dwelling place owned or leased by the individual's spouse.

Minn. Stat. **289A.63 Criminal penalties.**

Subdivision 1. **Penalties for knowing failure to file or pay; willful evasion.**. (a) A person required to file a return, report, or other document with the commissioner, who knowingly, rather than accidentally, inadvertently, or negligently, fails to file it when required, is guilty of a gross misdemeanor. A person required to file a return, report, or other document who willfully attempts in any manner to evade or defeat a tax by failing to file it when required, is guilty of a felony.

(b) A person required to pay or to collect and remit a tax, who knowingly, rather than accidentally, inadvertently, or negligently, fails to do so when required, is guilty of a gross misdemeanor. A person required to pay or to collect and remit a tax, who willfully attempts to evade or defeat a tax law by failing to so when required, is guilty of a felony.

Subd. 2. **False or fraudulent returns; penalties.** (a) A person who files with the commissioner a return, report, or other document, known by the person to be fraudulent or false concerning a material matter, is guilty of a felony.

(b) A person who knowingly aids or assists in, or advises in the preparation or presentation of a return, report, or other document that is fraudulent or false concerning a material matter, whether or not the falsity or fraud committed is with the knowledge or consent of the person authorized or required to present the return, report, or other document, is guilty of a felony.

Subd. 8. **Criminal penalties.** Criminal penalties imposed by this section are in addition to any civil penalties imposed by this chapter.

8001.0300 RESIDENT AND DOMICILE DEFINED; CONSIDERATIONS.

Subpart 1. **Resident.** The term "resident" means:

A. any individual person who is domiciled in Minnesota, subject to the exception set forth in subpart 9; and

B. any individual person (other than an individual deemed a non-resident under the Soldiers' and Sailors' Relief Act of 1940, United States Code, title 50 appendix, section 574, or an individual eligible for reciprocity under Minnesota Statutes, section 290.081) who is not domiciled in Minnesota but who maintains a place of abode in Minnesota and spends in the aggregate more than one-half of the taxable year in Minnesota.

A person may be a resident of Minnesota for income tax purposes, and taxable as a resident, even though the person is not deemed a resident for other purposes.

Subp. 2. **Domicile; definition and presumptions.** The term "domicile" means the bodily presence of an individual person in a place coupled with an intent to make such a place one's home. The domicile of any person is that place in which that person's habitation is fixed, without any present intentions of removal therefrom, and to which, whenever absent, that person intends to return.

A person who leaves home to go into another jurisdiction for temporary purposes only is not considered to have lost that person's domicile. But if a person moves to another jurisdiction with the intention of remaining there permanently or for an indefinite time as a home, that person has lost that person's domicile in this state. The presumption is that a person who leaves this state to accept a job assignment in a foreign nation has not lost that person's domicile in this state.

Except for a person covered by the provisions of the Soldiers' and Sailors' Relief Act of 1940, United States Code, title 50 appendix, section 574, the presumption is that the place where a person's family is domiciled is that person's domicile. The domicile of a spouse is the same as the other spouse unless there is affirmative evidence to the contrary or unless husband and wife are legally separated or the marriage has been dissolved. When a person has made a home at any place with the intention of remaining there and the person's family neither lives there nor intends to do so, then that person has established a domicile separate from that person's family.

The domicile of a single person is that person's usual home. In a case of a minor child who is not emancipated, the domicile of the child's parents is the domicile of the child. The domicile of the person who has legal custody of the child is the domicile of the child. A person who is a permanent resident alien in the United States may have a domicile in this state. The domicile of a member of the armed forces will be governed by the facts just prior to becoming a member of the armed forces unless the person takes the necessary steps to establish a new domicile.

The mere intention to acquire a new domicile, without the facts of physical removal, does not change the status of the taxpayer, nor does the fact of physical removal, without the intention to remain, change the person's status. The presumption is that one's domicile is the place where one lives. An individual can have only one domicile at any particular time. A domicile once shown to exist is presumed to continue until the contrary is shown. An absence of intention to abandon a domicile is equivalent to an intention to remain in the existing one. No positive rule can be adopted with respect to the evidence necessary to prove an intention to change a domicile but such intention may be proved by acts and declarations, and of the two forms of evidence, acts must be given more weight than declarations. A person who is temporarily employed within this state does not acquire a domicile in this state if during that period the person is domiciled outside of this state.

Subp. 3. **Considerations.** The following items listed will be considered in determining whether or not a person is domiciled in this state:

A. location of domicile for prior years;

B. where the person votes or is registered to vote, but casting an illegal vote does not establish domicile for income tax purposes;

C. status as a student;

D. classification of employment as temporary or permanent;

E. location of employment;

F. location of newly acquired living quarters whether owned or rented;

G. present status of the former living quarters, i.e., whether it was sold, offered for sale, rented, or available for rent to another;

H. whether homestead status has been requested and/or obtained for property tax purposes on newly purchased living quarters and whether the homestead status of the former living quarters has not been renewed;

I. ownership of other real property;

J. jurisdiction in which a valid driver's license was issued;

K. jurisdiction from which any professional licenses were issued;

L. location of the person's union membership;

M. jurisdiction from which any motor vehicle license was issued and the actual physical location of the vehicles;

N. whether resident or nonresident fishing or hunting licenses purchased;

O. whether an income tax return has been filed as a resident or nonresident;

P. whether the person has fulfilled the tax obligations required of a resident;

Q. location of any bank accounts, especially the location of the most active checking account;

R. location of other transactions with financial institutions;

S. location of the place of worship at which the person is a member:

T. location of business relationships and the place where business is transacted ;

U. location of social, fraternal, or athletic organizations or clubs or in a lodge or country club, in which the person is a member;

V. address where mail is received;

W. percentage of time (not counting hours of employment) that the person is physically present in Minnesota and the percentage of time (not counting hours of employment) that the person is physically present in each jurisdiction other than Minnesota;

X. location of jurisdiction from which unemployment compensation benefits are received;

Y. location of schools at which the person or the person's spouse or children attend, and whether resident or nonresident tuition was charged; and

Z. statements made to an insurance company, concerning the person's residence, and on which insurance is based.

Any one of the items listed above will not, by itself, determine domicile.

Charitable contributions made by a person will not be considered in determining whether that person is domiciled in Minnesota.

Subp. 4. **Days within and without Minnesota.** In counting the number of days spent within and without Minnesota, a person shall be treated as present in Minnesota on any day if the person is physically present in Minnesota at any time during that day. However, a person in transit between two points outside Minnesota who is physically present in Minnesota less than 24 hours, will not be treated as present in Minnesota on any day during transit.

Items A and B are examples of the application of this subpart:

A. T is flying from New York to California and must change flights in Minnesota. T is scheduled to arrive in Minnesota at 7:00 P.M. on March 1, and is scheduled to depart at 1:00 P.M. on March 2. Since T is in transit between two points outside Minnesota and is present instate less than 24 hours, neither March 1 or March 2 is treated as a day within Minnesota.

B. T has been in Minnesota from March 1 to April 15. On April 15, T departed from Minnesota at 6: A.M. T is treated as present in Minnesota on April 15.

Subp. 5. **Records.** Any person domiciled outside Minnesota who maintains a place of abode within Minnesota and claims to be a non-resident of the state must have available for examination adequate records to substantiate that more than one-half of the tax year was spent outside Minnesota.

Adequate records means any contemporaneously kept records that establish the places of physical presence of the person on particular dates. Adequate records include, but are not limited to, calendars, diaries, canceled checks, credit card receipts, and airline tickets.

Subp. 6. **Definition of abode.** An abode is a dwelling place permanently maintained by a person, whether or not owned and whether or not occupied by a person. It does not need to be permanent in the sense that the person does not intend to abandon it at some future time. However, a cabin or cottage not suitable for year round use and used only for vacations is not an abode. Additionally, quarters which contain sleeping arrangements but do not contain facilities for cooking or bathing will not generally be considered an abode.

A person who moves a domicile outside Minnesota is not considered to be maintaining an abode in Minnesota even though the person continues to own or rent a dwelling in Minnesota if the person has moved personal furnishings and belongings from the dwelling and is making a good faith effort to sell, lease, or sublease the dwelling.

Subp. 7. **Domiciliary residents.** The physical presence test does not apply to persons who are domiciled in Minnesota throughout the tax year. There is no presumption that a person domiciled in Minnesota has lost that domicile if the person is absent from Minnesota over one-half of the tax year.

Subp. 8. **Part year domiciliaries.** Persons domiciled in Minnesota who move their domiciles outside Minnesota during the tax year are part year residents of Minnesota. The physical presence test does not apply to such persons unless a Minnesota

abode is maintained during the period domiciled outside Minnesota.

Subp. 9. **Certain persons deemed nonresidents.** A person domiciled in Minnesota is deemed a nonresident for the period of time that the person is a qualified individual under the Internal Revenue Code, section 911. For a person who has homesteaded the person's principal residence in Minnesota prior to leaving the country, this subpart applies only if the person notifies the county within three months of moving out of the country that homestead status should be revoked and does not file a Minnesota homestead application for any property in which the person has an interest during the period the person is a qualified individual.

Subp. 10. **Examples.** Items A to E contain examples of the application of this part:

A. T was domiciled in Minnesota from January 1, 1987, through September 1, 1987, and did not leave the state during that period. On September 2, 1987, T sold the Minnesota dwelling and changed domicile to Texas.

T was a part year resident of Minnesota in 1987. Although T was physically present in Minnesota over 183 days, the physical presence test does not apply because T did not maintain an abode during the part of the year T was not domiciled in Minnesota.

B. Same facts as item A., but decided not to sell the Minnesota abode.

T was a full year resident of Minnesota in 1987. T was physically present and maintained an abode in Minnesota.

C. Same facts as item A, but T did not sell the Minnesota dwelling although T listed it for sale with a real estate broker at fair market value from September 1 through December 31, 1987.

T was a part year resident of Minnesota in 1987, assuming T removed personal belongings and furnishings from the Minnesota domicile when T changed domicile. Although T was physically present over one-half of the year and continued to own a dwelling in Minnesota, T will not be considered to have maintained an abode in Minnesota because T moved belongings from the dwelling and made a good faith effort to sell the dwelling.

D. T moved from Minnesota to Florida on February 1, 1987. T maintained an abode in Minnesota and lived in that abode May 1, 1987 to September 1, 1987.

T was not a full year resident of Minnesota under the physical presence test. Although T maintained a Minnesota abode, T was not physically present in Minnesota over one-half of the year.

However, the department could review steps T took to change domicile and could consider T a full year resident if it were determined T remained domiciled in Minnesota.

E. T moved domicile to Minnesota on June 1, 1987. T did not have an abode in Minnesota prior to June 1, 1987. T was physically present in Minnesota throughout the period of June 1, 1987 to December 31, 1987.

T was a part year resident of Minnesota in 1987. Although T was physically present in Minnesota over one-half of the year, T did not have a Minnesota abode during the part of the year T was

domiciled outside the state. Therefore, the physical presence test does not apply.

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Current as of 05/22/03

18 U.S.C. **§ 3571. Sentence of fine.**

(a) **In general.** – A defendant who has been found guilty of an offense may be sentenced to pay a fine.

(b) **Fines for individuals.**– Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of—

(1) the amount specified in the law setting forth the offense;

(2) the applicable amount under subsection (d) of this section;

(3) for a felony, not more than $250,000;

(4) for a misdemeanor resulting in death, not more than $250,000;

(5) for a Class A misdemeanor that does not result in death, not more than $100,000;

(6) for a Class B or C misdemeanor that does not result in death, not more than $5,000; or

(7) for an infraction, not more than $5,000.

(c) **Fines for organizations.**– Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of—

(1) the amount specified in the law setting forth the offense;

(2) the applicable amount under subsection (d) of this section;

(3) for a felony, not more than $500,000;

(4) for a misdemeanor resulting in death, not more than $500,000;

(5) for a Class A misdemeanor that does not result in death, not more than $200,000;

(6) for a Class B or C misdemeanor that does not result in death, not more than $10,000;

(7) for an infraction; not more than $10,000.

(d) **Alternative fine based on gain or loss.**– If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

(e) **Special rule for lowering fine specified in substantive provision.**– If a law setting forth an offense specifies no fine or a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.